IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CONTEMPT APPEAL NO.4 OF 2006

IN

CONTEMPT PETITION NO.230 OF 2005

Mr.Bharat S. Shah & Ors. .. Appellants

Vs.

Rajkumar Jugalkishore Saraf ..Respondents

Mr.T.N.Subramaniam, Sr.Advocate and Mr.Ashutosh Gavnekar & Mr.Amit Pradhan i/b Wadia Gandhy & Co. for the appellants

Mr.M.U. Pandey for the respondents

CORAM : **J. N. PATEL AND**
A. A. SAYED, JJ.

JUDGMENT RESERVED ON : 26th JULY, 2007

JUDGMENT PRONOUNCED ON : 27th AUGUST, 2007

JUDGMENT (PER J.N.PATEL, J.) :

1. Heard the learned counsel for the parties.

2. The appellants are the original respondents in Contempt Petition No.230 of 2005 who have preferred this appeal being aggrieved by the decision of the learned single Judge having issued rule in the matter of contempt proceedings initiated by the respondents. The brief facts leading to the filing of the Contempt Petition can be summed up as under:-

3. The contempt petition stems out of litigation between the parties filed in the Small Causes Court at Bombay. The appellants (original plaintiffs) hereinafter referred to as the ' owner' initiated proceedings against the respondents (original defendants) hereinafter referred to as the 'tenant' in the Small Causes Court for eviction. In the course of the proceedings, consent terms came to be drawn between the parties pursuant to which the tenants vacated the demised premises to enable the plaintiffs / owners to develop the property on the condition that the defendants / tenants would be provided two flats on the 7th floor in the said building. The

consent terms came to be accepted by the court by its order dated 4th August 1998. The court passed an order taking the consent terms on record which came to be marked Exhibit 'A' and the undertaking given by the plaintiffs in para 6, 9 and 10 of the consent terms and the undertaking given by the defendants in para 6 of the consent terms came to be accepted by the court and the suit was disposed of with no order as to costs.

4. It appears that as the plaintiffs / owners were not able to provide the two flats on the 7th floor of the said building to the defendants / tenants, the defendants exercised the option by calling upon the plaintiffs to pay a sum of Rs.5 crores along with an agreement to that effect. It is the case of the defendants/ tenants that though he opted for accepting a sum of Rs.5 crores from the plaintiffs / owners, he is also entitled to a sum of Rs.32.0 lakhs @ Rs.1.0 lakh per month for a period of 32 months on account of the failure on the part of the plaintiffs / owners to pay the said sum of money though as per clause 9 of the consent terms, the plaintiffs

had agreed to pay the sum on his failure to complete the construction within a period of 3 years from the date of the defendant vacating the premises (which was vacated in April 1999 i.e. 36 months got completed at the end of April 2002).

5. It was further their case that the plaintiffs had no intention to provide the flats to the defendants. At the very inception they did not obtain sanction of the building plan to carve out the flats of which undertaking was given for being provided to the defendants. It is in this backdrop that the parties exchanged notices through their advocates. Not only this, the tenant initiated various proceedings against the plaintiffs by filing Company Petition No.426 of 2005 seeking winding up of the Company which came to be dismissed by the Company Judge by its order dated 19.01.2006, Contempt Petition No.230 of 2005 has been admitted by the learned single Judge under the impugned order dt.30.01.2006. The tenants also resorted to Summary Suit No.3234 of 2005 being filed on the Original Side of this court where the learned single Judge by

an order dt.29.08.2006 granted leave to the defendants to defend the suit.

6. It is the contention of the learned counsel for the appellants (contemnor) that the Contempt Petition is not maintainable for the very reason that it involves a proper interpretation of the Consent Terms entered between the parties in the proceedings before the court of Small Causes and particularly when the respondent / tenants could not succeed in the Company Petition No.426 of 2005 which was initiated against the appellant for winding up of the Company on the same cause of action and came to be dismissed by the Company Judge by his order dated 19.01.2006 wherein the Company Judge has clearly observed that the claim of the petitioner against the Company is in realm of bonafide dispute and, therefore, according to the appellants in the given facts and circumstances, no prima facie case is made out even to hold that the appellants have committed “civil contempt” as defined under section 2(b) of Contempt of Courts Act, 1971. Further, it is

submitted that as the respondents have filed a Summary Suit for recovery of the amount claimed which is alleged to be part of the undertaking and wherein unconditional leave to defend has been granted, no action for contempt would lie. In support of his contention the learned counsel for the appellant has placed reliance on the decision of the Supreme Court rendered in the case of **Indian Airports Employees Union vs. Ranjan Chatterjee & Another reported in JT 1999 (1) SC 213 .**

7. Another contention of the learned counsel for the appellant is, in a way, reply to the contention of the respondent that the appeal is not maintainable as the matter is yet to be decided and the court has only passed an order issuing rule in the matter. It is submitted that this court can very well entertain such appeal as this is a case of gross misuse of Jurisdiction.

8. It is specifically contended that the Supreme Court in the case of **R.N.Dey and Others vs. Bhagyabati Pramanik and Others**

reported in (2000) 4 Supreme Court Cases 400 while dealing with the issue held that when the court either suo moto or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt and the exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt and against such order, appeal would be maintainable.

9. The learned counsel for the appellant submitted that in view of the orders passed by the Company Judge and the respondent having taken resort to a remedy by filing a Summary Suit to recover the alleged amount, it is a debatable issue and, therefore, unless it is adjudicated, it cannot be said that there was willful or deliberate disobedience of the undertaking recorded in the consent terms and, therefore, in the facts and circumstances, the initiation of Contempt Petition was wholly unjustified.

10. Mr.Pandey, the learned counsel for the respondents submitted that the order of issuing rule in Contempt Petition is not an appealable order as it does not decide or dispose of the matter so as to call as an order which affects the rights of the parties. He submitted that unless the order is appealable, no statutory appeal is maintainable and the impugned order issuing rule in the matter does not come within the Letters Patent Jurisdiction of this court and places reliance in the case of **Shah Babulal Khimji vs. Jayaben D. Kania and another reported in AIR 1981 SUPREME COURT 1786.**

11. Mr.Pandey, the learned counsel for the respondents also places reliance on the case of **Midnapore Peoples' Coop. Bank Ltd. vs. Chunilal Nanda and Others reported in (2006) 5 Supreme Court Cases 399.**

12. The facts in the case as presented by the parties are not

much disputed and we have already observed that the Contempt Petition stems out from the alleged breach of undertaking given in the Consent Terms filed before the court of Small Causes and it is for breach of an undertaking given to the court. The learned Judge before issuing rule has recorded his reasons by way of justification as to why he finds that prima facie case is made out to issue rule in the matter.

13. We have examined the Consent Terms filed before the court of Small Causes at Bombay in E.A.No.74/330 of 1973. We do not think it necessary to reproduce the terms and conditions recorded in the consent terms but needless to state that there are undertakings given to the court by the parties which have been accepted by the learned Judge of the Small Causes while disposing of the suit between the parties.

14. At this stage, it will not be proper on our part to go into the merits of the matter as that would be the task of the learned Judge

who will be dealing with the Contempt Petition on merits and the parties would get ample opportunities to assist the court in deciding whether the appellant has committed contempt or not but we may like to put on record that it is a common feature in our courts to dispose of suits / litigation between the parties in accordance with the consent terms which in most of the cases incorporates undertakings given to the court by the parties concerned. One such undertaking is in the nature of making payment of certain sums of money as part of the terms and conditions agreed upon by the parties. One distinction, however, between orders and undertakings remains of significance. An undertaking to the

court to pay money is not, outside the context of the law of contempt, like an order to pay money, since the obligation to the court imposed by an undertaking confers no right upon any other person, for example, to recover by means of levying execution or attaching a debt, unless there is a bargain between the parties alongside the undertaking to the court, such as, for example, might be incorporated in the terms of a consent order. In such a case,

there are available penal sanctions against the non-paying “culprit”, aimed at enforcing a promise made to the court, but they are not remedies to compensate the other party.

15. The contention of the learned counsel for the appellants who are the contemnors is that while issuing rule, the learned Judge failed to consider and overlooked the facts on the basis of which contempt proceedings are initiated and as the issue is debatable which is evident from the fact that the respondent has resorted to remedies such as filing the Contempt Petition which came to be dismissed by learned Company Judge by its order dt.19.01.2006 and also filing of a Summary Suit in which leave to defend has been granted on the same cause of action and subject matter taking cognisance of the same in a contempt proceedings was un-called for.

16. The reliance placed by Mr.Subramaniam, the learned counsel for the appellants on a decision rendered by the Supreme

Court in the case of **Indian Airports Employees Union Vs. Ranjan Chatterjee & Another reported in JT 1999 (1) SC 213** and particularly referring to para 11 of the reported judgment that in a given case if there are rival contentions that involve an interpretation of the order of this Court, the notification and other relevant documents, has to be decided in appropriate proceedings and it cannot be said to amount to 'willful disobedience' of the orders of this Court, is misplaced.

17. The aforesaid case was in the arena of interpretation of the order of the court which was so held by the Apex Court and that it requires to be decided in appropriate proceedings and therefore, it was decided that the non-absorption of the sweepers working in the Car Park area cannot be said to amount to 'willful disobedience' of the orders of the Court.

18. In the case at hand, the question relates to abiding by the undertaking given to the court as recorded in the Consent Terms

may be that the undertakings were given on hapenning of certain contingencies that is the issue which will be examined by the learned Judge while dealing with the petition on merits.

19. Another case on which reliance is placed by the learned counsel for the appellant is the decision rendered by the Supreme Court in the case of R.N.Dey and Others Vs. Bhagyabati Pramanik and Others (Supra) where it has been held that the exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable.

20. This was a case relating to order impugned by the Collector under the Land Acquisition Act wherein the application was filed before the court contending that the officers of the State were in contempt as they had not complied with the orders of the High

Court and the court on issuing notice to them, the appellants appeared and tendered an unqualified apology which the court accepted and also permitted them to deposit the compensation money payable in the matter but the High Court did not pass any order on an application moved by the Collector, seeking vacating of the rule issued in the contempt of court proceedings and deferred it with an observation that this application would be heard along with First Appeal. Before the Supreme Court, the issue contended on behalf of the appellants was that in the circumstances, there was no basis for the contempt application and that the High Court ought not to have issued rule in the matter at all and that is how the Supreme Court came to the conclusion that under the coercion of contempt proceeding, the appellants cannot be directed to pay the compensation amount which they are disputing by asserting that the claimants were not the owners of the property in question and that decree was obtained by suppressing material facts and by fraud and if at all the High Court did not grant any stay to the compensation awarded by the Trial Court they could have

recovered the same by executing the award and, therefore, in such a situation there was no 'willful disobedience' of the order and the initiation of contempt proceedings was wholly unjustified.

21. The Supreme Court while dealing with the case of R.N.Dey and Others Vs. Bhagyabati Pramanik and Others (Supra) has taken into consideration their decision in the case of Purshotam Dass Goel v. Justice B.S. Dhillon (Supra) particularly, the observation made in para 3 i.e. “If the alleged comtemnor in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this court under Section 19 from such an order although the proceeding has remained pending in the High Court.”

22. In our view, that was in the context that an appeal from an order initiating the contempt proceedings in a given case can be

entertained, particularly those where the order decides some disputes raised before the court by the contemnor asking it to drop the proceedings on one ground or the other. But in the case of Purshotam Dass Goel v. Justice B.S.Dhillon (Supra), the Supreme Court has in terms accepted the preliminary objection raised on behalf of the respondent i.e. the Learned Solicitor General that no appeal lies to this court under section 19 of the Act from an order issuing notice as nothing yet has been decided by the High Court. The Supreme Court has expressed that it would appear from a plain reading of the section that an appeal shall lie to this court as a matter of right from any order or decision of the bench of the High Court if the order has been made in the exercise of its Jurisdiction to punish for contempt. No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated under section 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this court

as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of a notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. (emphasis supplied)

23. In the present case, the learned single Judge while considering whether to initiate the proceedings for contempt has only expressed a prima facie view for justifying initiation of the proceedings without anything further and has not decided any issue against the alleged contemnor i.e. the appellant and therefore, there was no decision in the matter of the nature affecting the right of the party aggrieved.

24. In the case of Midnapore Peoples' Coop Bank Ltd. and Others v. Chunilal Nanda and Others (Supra), the Honourable

Supreme Court had an occasion to exhaustively deal with the subject of maintainability of an appeal on the following issues :

(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under Section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent?

(iii) In a contempt proceeding initiated by a delinquent employee (against the enquiry officer as also the Chairman and Secretary in charge of the employer Bank),

complaining of the court can prevented that the that the officer and the and (e) that revoked?

of disobedience of an order directing completion enquiry in a time-bound schedule, whether the direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be from discharging his duties in any manner; (c) employee shall be paid all arrears of salary; (d) enquiry officer shall cease to be the enquiry employer shall appoint a fresh enquiry officer; the suspension shall be deemed to have been

25. The Court has also taken into consideration the decision of the court in the case of Purshotam Dass Goel v. Justice B.S.Dhillon (Supra) and after taking into consideration various decisions in regard to the appeal against order in contempt proceedings, in reply to the first issue has summarised thus:

I. An appeal under Section 19 is maintainable only

against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In

such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the

merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

26. Therefore, we have no hesitation to conclude that in the facts and circumstances of the case, the appeal is not maintainable and therefore, it is dismissed.

(J. N. PATEL, J)

(A. A. SAYED, J)